

Internal Revenue Service

Department of the Treasury
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Refer Reply To:
CC:ITA:B04
PLR-136933-09
Date:
January 08, 2010

In re:

LEGEND

Year 1	=
<u>X</u>	=
<u>Y</u>	=
<u>Z</u>	=
Date 1	=
Representative	=

Dear :

This is in reply to your request to revoke an election out of the installment method under § 453(d)(3) of the Internal Revenue Code and §15A.453-1(d)(4) of the Temporary Regulations under the Installment Sales Revision Act of 1980.

FACTS

You are an individual and report income under the cash basis method of accounting and use the calendar year as your taxable year. Your business operations include commercial and residential real estate rentals and interests in several pass-through entities. In Year 1, you sold non-residential real estate to an unrelated party for \$ X, which resulted in a realized gain (the Sale). You received cash of \$ Y and a promissory note of \$ Z due and payable on or before Date 1.

You engaged Representative to prepare your Year 1 federal income tax return. Although you intended to report the Sale on the installment method under § 453, Representative inadvertently reported the entire amount of gain from the Sale on the Year 1 federal income tax return, causing an election out of the installment method.

The day after Representative brought the error to your attention, you filed this request to revoke the election out of the installment method for Year 1. Representative has provided affidavits indicating that although you instructed Representative to use the installment method, Representative inadvertently prepared and filed the Year 1 federal income tax return reporting the entire gain from the Sale for that year.

LAW AND ANALYSIS

Section 453(a) provides that a taxpayer shall report income from an installment sale under the installment method. Section 453(b)(1) defines an installment sale as a disposition of property where at least one payment is to be received after the close of the taxable year of the disposition.

Section 453(d)(1) provides, however, that the installment method will not apply to a disposition if the taxpayer elects not to have the installment method apply to the disposition. Under § 453(d)(2), except as otherwise provided by regulations, an election out of the installment method with respect to a disposition may be made only on or before the due date prescribed by law (including extensions) for filing the taxpayer's return of tax for the taxable year in which the disposition occurs.

Section 453(d)(3) provides that a taxpayer who has elected out of the installment method may revoke that election only with the consent of the Secretary.

Section 15A.453-1(d)(4) provides that generally an election out of the installment method is irrevocable. An election may be revoked only with the consent of the Internal Revenue Service. A revocation, which is retroactive, will not be permitted when one of its purposes is the avoidance of federal income taxes, or when the taxable year in which any payment was received has closed.

Representative did not prepare your Year 1 federal income tax return in accordance with your instruction to report the Sale under the installment method. Representative inadvertently prepared the Year 1 return reporting all the gain from the Sale in that year. As soon as you became aware of Representative's error, you filed this request for consent to revoke the election out of the installment method.

CONCLUSION

Based on the information submitted and the representations made, your request to revoke the election does not involve hindsight or a purpose of avoiding federal income taxes.

Accordingly, you may revoke your election out of the installment method for the Year 1 Sale, but only if you revoke the election during the period ending 75 days after the date of this letter by filing amended federal income tax returns for Year 1 and other years for

which you previously filed returns on which a portion of the gain from the Sale is reportable under the installment method. You must attach to each amended return a copy of this letter ruling.

CAVEATS

We do not express or imply an opinion concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter other than those expressed in the conclusion, above. For example, we do not express an opinion concerning whether the Sale qualifies for installment method reporting.

We based the rulings contained in this letter upon information and representations that you, Representative, and his associates submitted under the penalties of perjury. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, we are sending a copy of this letter to your authorized representative.

Sincerely,

Michael J. Montemurro
Branch Chief, Branch 4
Office of Associate Chief Counsel
(Income Tax & Accounting)

cc: